IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 79 of 1997.

Judgment reserved on: 5.11.2007

Date of decision: 18.12.2007

Chando **…….Appellant**

Vs.

Kishan Singh & Ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. Ramakant Sharma, Advocate.

For the Respondents : Mr. R.K. Sharma, Advocate.

Kuldip Singh, Judge.

The defendant is in appeal against judgment, decree dated 10.1.1997 passed by learned Addl. District Judge-I, Kangra at Dharamshala in Civil Appeal No.45-N/96, confirming judgment, decree dated 9.4.1996 passed by learned Sub Judge Ist Class-I, Nurpur, District Kangra in Civil Suit No.652 of 1989.

2. The facts in brief are that respondents filed a suit for possession against appellant regarding land comprised in Khasra No.1321 measuring 0-13-16 HM, kita 1, as per Missal Haquiat Bandobast Jadid Sani 1984-85, situated in tikka Chownki Mauza Nilakh, Tehsil Nurpur, District Kangra. The original plaintiff Munshi

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

Ram died during the pendency of the suit and his legal representatives were brought on record. The case of the respondents is that they are co-owners along with others on the suit land and appellant has no right, title or concern with the suit land. The appellant took forcible possession of the suit land during settlement operation in November, 1982. He was asked to hand over vacant possession of the suit land, but of no avail.

3. The appellant contested the suit and took preliminary objections of maintainability, locus standi, non-joinder of necessary parties etc. On merits the appellant has taken plea that the suit land was purchased through a registered sale deed in the year 1961 by his predecessor-in-interest from the predecessor-in-interest of respondents. On these grounds, the appellant contested the suit. The respondents filed replication and denied the case set up by the appellant.

4. The learned Sub Judge has held that the suit land was not purchased by predecessor-in-interest of appellant from the predecessor-in-interest of the respondents and decreed the suit on 9.4.1996. The appellant filed appeal against the decision dated 9.4.1996 which has been dismissed by learned Addl. District Judge-I, Kangra at Dharamshala on 10.1.1997, hence this appeal.

5. The appeal has been admitted on following substantial questions of law:-

1. *Whether the impugned judgment and decree is the result of complete misreading,*

misinterpretation as well as misappreciation of Ext. DI and Ext.D-2 sale deeds?

2. *Whether the courts below have misread as well as misinterpreted the jamabandies for the year 1983-84 Ext. P-1?*
3. *Whether the judgment and decree of the learned lower appellate court can be sustained especially when the evidence adduced by the appellant in the form of DW-1 to DW-3 has not at all been discussed?*
4. *Whether the impugned judgment and decree can be sustained when the plaintiffs have failed to file any tatima to identify the land especially when after the settlement, khasra numbers have been changed?*
5. *Whether the learned lower appellate court was right in decreeing the suit filed by some of the co-sharers especially when the suit was filed for possession and other co-sharers having not been joined either as plaintiffs or as proforma defendants?*

6. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellant has submitted that the Lower Appellate Court has erred in rejecting the case of the appellant. The suit land was purchased by predecessor-in-interest of the appellant from the predecessor-in-interest of the respondents. The evidence has not been appreciated properly, more particularly sale deeds Ex. D-1 and Ex.D-2 as well as jamabandies. The land has not been properly identified and the other co-owners

have not been impleaded as parties. The learned counsel for the respondents has supported the impugned judgment, decree.

7. The Substantial Questions of Law No.1 to 5 are interconnected and therefore, all of them are being disposed of together.

8. The learned counsel for the appellant has submitted that the suit land was purchased by predecessor-in-interest of the appellant from the predecessor-in-interest of the respondents vide sale deeds Ex.D-1 and D-2 and therefore, respondents have no right, title or interest in the suit land. The learned Addl. District Judge has recorded a specific finding that as per sale deeds Bankoo father of appellant had purchased part of old khasra Nos.894 and 892 from one Punjaboo and he also purchased part of old khasra No.894 from Munshi Ram. This finding has not been disputed by either side. The dispute is with respect to old khasra No.893 having present khasra No. 1321. The sale deeds Ex.D-1 and Ex.D-2 have no connection with the suit land. The two Courts below have rightly appreciated the material on record and have come to the conclusion that as per sale deeds Ex.D-1 and Ex.D-2 predecessor-in-interest of the appellant has not purchased the suit land from the predecessor-in-interest of the respondents. On the contrary, as per jamabandi for the year 1975-76 Ex.P-2, Munshi Ram predecessor-in-interest of the respondents was recorded owner in possession of khasra No.893 along with other co-sharers. This is also supported by Missal Haquiat for the year 1983-84 Ex.P-1 where in the column of ownership Munshi Ram and

other co-sharers are recorded. However, in the column of possession in Ex.P-1 appellant has been shown in possession of suit land, but the possession of appellant on suit land is without any right. The appellant, except for pleading ownership of the suit land, has not pleaded any other defence to protect his possession. The appellant has failed to prove his any title on the suit land, therefore, respondents are entitled to possession of the suit land.

9. It has been submitted on behalf of the appellant that suit land has not been properly identified and suit is bad for want of impleading other co-sharers. In the grounds of appeal before the lower appellate Court no specific grounds have been taken that the suit land has not been properly identified and suit is bad for not impleading other co-sharers. In fact, it appears, no such points were raised during hearing before the learned lower appellate Court. It is not the case of the appellant that despite having raised these points the lower appellate Court has ignored the submissions of the appellant. Therefore, now the appellant cannot be permitted to raise these points in second appeal. It has not been pointed out which specific oral or documentary evidence has been misinterpreted by Courts below. The two Courts below have rightly appreciated the material on record. No case for interference has been made out. The substantial questions of law No.1 to 5 are decided against the appellant.

10. No other point was urged.

11. The result of the above discussion, appeal fails and is accordingly dismissed.

(Kuldip Singh)
Judge.

December 18, 2007
(sks)